

1 HONORABLE THOMAS S. ZILLY
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUNTERS CAPITAL, LLC, et al.,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

Case No. 20-cv-00983

**DECLARATION OF SHANE P. CRAMER
IN SUPPORT OF MOTION FOR
SPOILATION SANCTIONS AGAINST
PLAINTIFFS HUNTERS CAPITAL;
RICHMARK LABEL; MATTHEW
PLOSZAJ; CAR TENDER; BERGMAN'S
LOCK & KEY; WADE BILLER; AND
ONYX HOMEOWNERS ASSOCIATION**

I, Shane P. Cramer, declare as follows:

1. I am one of the attorneys representing the City of Seattle in this action. I am over
age 18, competent to be a witness, and making this declaration based on facts within my own
personal knowledge.

2. Attached as **Exhibit 1** is a true and correct copy of excerpts from the deposition of
Michael Malone, taken in this matter on August 22, 2022.

3. Attached as **Exhibit 2** is a true and correct copy of an email and letter dated
December 23, 2021 from plaintiffs' counsel, Gabe Reilly-Bates, regarding Mr. Malone's text
messages.

DECLARATION OF SHANE P. CRAMER IN SUPPORT OF
MOTION FOR SPOILATION SANCTIONS AGAINST
CERTAIN PLAINTIFFS - 1
(Case No. 20-cv-00983)

LAW OFFICES
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1 4. On March 26, 2021, I participated in a call with my former colleague, Kristin
 2 Ballinger, and counsel for Plaintiffs, including Tyler Weaver, Andrew DeCarlow, and Harold
 3 Malkin. During that call on March 26, 2021 we disclosed to Plaintiffs' counsel for the first time
 4 that certain City employees, including Mayor Durkan, Chief Best, Fire Chief Scoggins, Idris
 5 Beauregard, Kenneth Neafcy, and Chris Fisher, no longer had their text messages from June 2020,
 6 due to various circumstances with their phones.

7 5. Attached as **Exhibit 3** is a true and correct copy deposition exhibit number 193
 8 from the August 22, 2022 deposition of Michael Malone. The document is a spreadsheet of Jill
 9 Cronauer's text messages that were produced in this matter. We have highlighted the rows
 10 containing messages sent to or from Mr. Malone, for the Court's reference. To make the document
 11 more legible, the last three columns of the spreadsheet that did not contain substantive information
 12 were deleted.

13 6. Attached as **Exhibit 4** is a true and correct copy of deposition exhibit number 194
 14 from the August 22, 2022 deposition of Michael Malone. The document is a spreadsheet of
 15 Michael Oaksmith's text messages that were produced in this matter. We have highlighted the
 16 rows containing messages sent to or from Mr. Malone, for the Court's reference. To make the
 17 document more legible, the last three columns of the spreadsheet that did not contain substantive
 18 information were deleted.

19 7. Attached as **Exhibit 5** are true and correct copies of text messages between
 20 Mr. Malone and Former Seattle Mayor Jenny Durkan, using her personal phone. These documents
 21 were produced in this matter by Mayor Durkan's counsel in response to a subpoena issued by
 22 Plaintiffs.

23 8. Attached as **Exhibit 6** is a true and correct copy of excerpts from the deposition of
 24 Ms. Cronauer, taken in this matter on September 30, 2021.

25 9. Attached as **Exhibit 7** are true and correct copies of text messages screenshots

1 between the owner of Havana Hospitality Group, Inc. and Ms. Cronauer between March –
2 September 2020, and between the owner of Havana Hospitality Group and Mr. Oaksmith on
3 June 15, 2020. These text messages were produced in this matter by Havana Hospitality Group,
4 Inc. in response to the City’s third-party subpoena and were Bates numbered by Plaintiffs’ counsel
5 HAVANA-000014-15, HAVANA-000017-26, and HAVANA-000143.

6 10. Attached as **Exhibit 8** is a true and correct copy of an email exchange dated May 1
7 – May 8, 2020 between Zoe Rowell of The Riveter and Jill Cronauer of Hunters Capital. This
8 document was produced in this matter by The Riveter in response to the City’s third-party
9 subpoena and was Bates numbered by the City’s counsel for tracking purposes RIVETER_000076-
10 77.

11 11. Attached as **Exhibit 9** is a true and correct copy of an emails between members of
12 The Stable and Hunters Capital between May and July 2020. These documents were produced in
13 this matter by The Stable in response to the City’s third party subpoena and were Bates numbered
14 by The Stable’s counsel Stable_Subpoena_Response_006 – 011 and
15 Stable_Subpoena_Response_014 – 017.

16 12. Attached as **Exhibit 10** is a true and correct copy of an email exchange between the
17 owner of Poquito’s LLC and Ms. Cronauer dated September – October 2021. This document was
18 produced in this matter by Poquitos in response to the City’s third party subpoena and was Bates
19 numbered by Plaintiffs’ counsel POQUITOS-000009. This exhibit is being filed under seal.

20 13. Attached as **Exhibit 11** is a true and correct copy of a letter dated July 21, 2021
21 from Plaintiffs’ counsel, Tyler Weaver, to my former colleague, Kristin Ballinger, regarding text
22 and Signal message issues.

23 14. Attached as **Exhibit 12** is a true and correct copy of excerpts from Plaintiffs’
24 Objections, Answers and Responses to City of Seattle’s Fifth Discovery Requests dated
25 February 7, 2022.

DECLARATION OF SHANE P. CRAMER IN SUPPORT OF
MOTION FOR SPOILATION SANCTIONS AGAINST
CERTAIN PLAINTIFFS - 3
(Case No. 20-cv-00983)

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15. Attached as **Exhibit 13** is a true and correct copy of excerpts from the deposition of Bill Donner, taken in this matter on November 16, 2021.

16. Attached as **Exhibit 14** is a true and correct copy of excerpts from the deposition of Wade Biller, taken in this matter on December 10, 2021.

17. Attached as **Exhibit 15** is a true and correct copy of excerpts from the deposition of Lonnie Thompson, taken in this matter on May 4, 2021.

18. Attached as **Exhibit 16** is a true and correct copy of an October 11, 2016 Signal Blog detailing the “latest Signal release for iPhone, Android, and Desktop now includes support for disappearing messages”. This article was retrieved on September 28, 2022 at:

<https://signal.org/blog/disappearing-messages/>.

19. Attached as **Exhibit 17** is a true and correct copy of excerpts from the deposition of LaRisa DeYoung, taken in this matter on September 19, 2022.

20. Attached as **Exhibit 18** is a true and correct copy of excerpts from the deposition of John McDermott, taken in this matter on January 19, 2022.

21. Attached as **Exhibit 19** is a true and correct copy of excerpts from a printout of the Signal data of non-party Stephanie Moore, which was produced by Plaintiffs in native Excel and Bates numbered CHOP-0028732. The native Excel was sorted by “GroupName.” Pages of the printout that include messages sent by plaintiffs have been excerpted and attached hereto. These printouts show that the following plaintiffs and employees of plaintiffs were active on the Signal messaging app as of at least the below dates:

- **Jill Cronauer** (Hunters Capital owner and operations manager) – June 26, 2020 (see Ex. 19 at p. 26.);
- **Kayla Stevens** (Hunters Capital Residential Leasing Manager) – June 25, 2020 through July 1, 2020 (*see* Ex. 19 at pp. 24, 25, 38);
- **Wade Biller** (Plaintiff and Representative for Plaintiff Onyx Homeowners

Association) – July 25, 2020 through December 21, 2020. (see Ex. 19 at pp. 117, 205). Ms. Moore’s data shows that Mr. Biller sent approximately 1,300 Signal messages between July 25 and December 21, 2020.

- **Elle Lochelt** (Richmark Label's Sales and Marketing Manager) – June 19, 2020 through August 12, 2020; (*see* Ex. 19 at pp. 11, 13, 16, 18, 19, 21, 23, 25- 27, 30, 35-37, 45, 47);
- **Matthew Ploszaj** (Plaintiff) – October 2, 2020 November 2, 2020 (*see* Ex. 19 at pp. 93-98, 101, 102, 109);
- **John McDermott** (Car Tender Co-Owner) – September 18, 2020 through November 8, 2020 (*see* Ex. 19 at pp. 78, 114).

22. Attached as **Exhibit 20** is a true and correct copy of an email exchange between Bill Donner and Alan Anderson, both of Richmark Label, dated June 11, 2020. This document was produced in this matter by Plaintiffs under Bates number CHOP-0005671 and was marked as Exhibit 86 to the November 16, 2021 deposition of Mr. Donner.

23. Attached as **Exhibit 21** is a true and correct copy of an email exchange between Bill Donner of Richmark Label and Gary Volchok, dated June 11-12, 2020. This document was produced in this matter by Plaintiffs under Bates number CHOP-0005676 – 0005677 and was marked as Exhibit 90 to the November 16, 2021 deposition of Mr. Donner.

24. Attached as **Exhibit 22** is a true and correct copy of an email exchange between Bill Donner of Richmark Label and Doug Glant, dated June 19-20, 2020. This document was produced in this matter by Plaintiffs under Bates number CHOP-0005545.

25. Attached as **Exhibit 23** is a true and correct copy of an email exchange between Bill Donner of Richmark Label and Wendy Rosen, dated June 17, 2020. This document was produced in this matter by Plaintiffs under Bates number CHOP-0005544.

26. Attached as **Exhibit 24** is a true and correct copy of excerpts from Plaintiffs'

1 Hunters Capital, LLC's Answers and Responses to Defendant City of Seattle's First Discovery
2 Requests, dated January 15, 2021.

3 27. Attached as **Exhibit 25** is a true and correct copy of excerpts from Plaintiffs'
4 Objections, Answers and Responses to City of Seattle's Sixth Discovery Requests, dated
5 March 28, 2022.

6 28. On September 27, 2022, and at various other times in this case, counsel have met
7 and conferred in good faith regarding the bases for the City's spoliation claims, but were not able
8 to reach agreement that would have obviated the need for the filing of the City's motion. During
9 the parties' meet and confer on September 27, 2022, I provided Plaintiffs' counsel with the Bates
10 numbers for the third party documents that contain their emails and texts with Jill Cronauer that
11 had not been produced by Hunters Capital. I asked Plaintiffs counsel to confirm that they had not
12 been deleted and to provide copies before September 29, 2022 if they still existed. We received no
13 such copies from Hunters Capital as of the time of the preparation of this motion for filing.

14 I swear under the penalty of perjury under the laws of the United States that the foregoing
15 is true and correct.

16 DATED this 29th day of September 2022, at Seattle, Washington.

17 *s/ Shane P. Cramer* _____
18 SHANE P. CRAMER